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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,558	05/23/2001	Michael D. Ellis	UV-200	2848
1473	7590	12/05/2006	EXAMINER	
FISH & NEAVE IP GROUP ROPES & GRAY LLP 1251 AVENUE OF THE AMERICAS FL C3 NEW YORK, NY 10020-1105			YIMAM, HARUN M	
			ART UNIT	PAPER NUMBER
			2623	

DATE MAILED: 12/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

09/864,558

**Applicant(s)**

ELLIS, MICHAEL D.

**Examiner**

Harun M. Yimam

**Art Unit**

2623

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 02 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): 112 second paragraph rejection for claims 161, 174, 189 and 191.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: ~~161, 174, 189, 191~~.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**


11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

Continuation of 11. Submitted arguments do NOT place the application in condition for allowance because:

The 112 second paragraph argument on rejected claims 161, 174, 189 and 191 is persuasive and the 112 second paragraph rejection is withdrawn. However, claims 161 – 165, 168 – 170, 173 – 178, 181 – 183, 186 – 188 and 190 still remain rejected under 35 U.S.C. 103(a) as being unpatentable over Rothmuller (US 5,635,989) in view of Bedard (US 5,801,747).

In response to applicant's argument that Bedard does not determine how long a viewer watches a program because Bedard is directed to determining a viewer's preferred channels, applicant should first note that Rothmuller (US 5,635,989) is the primary reference used to teach said limitation. Having said that, figure 2 in Bedard shows channels and their corresponding programming categories and programming subcategories (i.e., music, sports, movies, etc) (column 8, lines 55-58). The system determines how long a viewer watches a certain program category/subcategory and assigns viewing units based on said determination. Therefore, Bedard also teaches determining how long a viewer watches a certain program.

In response to applicant's argument that Bedard does not teach ranking anything based on how long the viewer watches various program channels, applicant should note that Bedard does teach ranking a program of interest based on how long a user has watched a particular program (Bedard - column 4, line 27 - column 6, line 27): the system determines how long a viewer watches a certain program category/subcategory and assigns viewing units based on said determination i.e., ranking said program(s) of interest. Assigning viewing units based on how long a viewer watches a particular program is ranking those programs. The more viewing units a certain program channel has assigned to it, the longer it has been watched thereby indicating its higher ranking. For example, figure 2 in Bedard shows that sports programs are ranked higher (45) than arts (4). Furthermore, applicant should note that the claim does NOT specify that ranking requires the generation of an ordered list. Therefore, Bedard does teach ranking a program of interest based on how long a user has watched a particular program.

  
SCOTT E. BELIVEAU  
PRIMARY PATENT EXAMINER